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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,038	02/15/2002	Kenneth Heath	RPS6043D2	7946

7590 08/11/2004

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EXAMINER

RHEE, JANE J

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/076,038

Applicant(s)

HEATH, KENNETH

Examiner

Jane Rhee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/26/2004.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Rejections Repeated***

1. The 35 U.S.C. 112 first paragraph and objection to the specification for the new matter in claim 1 has been repeated for the reasons previously made in Paper 13.
2. The 35 U.S.C. 103(a) rejection of claim 1 over Thompson et al. in view of Intini has been repeated for the reasons previously made in Paper 13.

### ***Response to Arguments***

3. Applicant's arguments filed 4/26/2004 have been fully considered but they are not persuasive.

In response to applicant's arguments that the new limitation added to claim is not new matter and the embodiment that is described by the phrase is supported by the specification, applicant merely states a process limitation stating that the film is stretched in a manner minimizing stretching of the film located at the base of the blister (page 4 line 4) and that the stretching of the laminated film is from around the blister rather than from the base in initial movement of the film (page 4 line 8 and page 7 line 10). However, the process limitation does not support the limitation that the blister base film thickness is greater than the blister side thickness just because the stretching of the film is from around the blister rather from the base and that the base comprises a minimum amount of stretching. The side thickness of the blister film may have initially started off being really thick and therefore stretching the side thickness would even the thickness of the side thickness with the base thickness. Also, the

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base thickness may have started off with a thinner thickness wherein stretching the side thickness would narrow the side thickness and be even with the base thickness. Furthermore, the specification does not specify how minimal the stretching of the base is compared to how much the side edges are permitted to stretch which very well can be an even difference wherein the base and side edge would obtain the same thickness. Therefore there is no support in the specification that the blister base thickness is greater than the blister side thickness.

In response to applicant's argument that the Examiner is not at liberty to disregard the claimed process language of the claim, the Examiner respectfully disagrees. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

In response to applicant's argument that Intini teachings are directed to the planar portion of a blister pack and not the blisters themselves, the examiner broadly interpreted the claim language of the blister pack as a whole and that blister base film (figure 8 combination of numbers 12,18,20 and 14 make the base) was the base of the blister pack and the blister side thickness (left side of the blister in figure 8) was the side of the blister pack. Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's

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invention was made to provide Thompson et al. with the blister base thickness is greater than the blister side thickness in order to provide a greater security against children being able to open the package (col. 4 lines 67-68).

Thus, in the absence of any evidence to the contrary, it remains the Examiner's position that the claimed invention is rendered obvious over the prior art of record discussed above.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

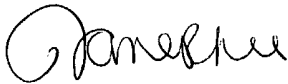
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Ahmad can be reached on 571-272-1487. The

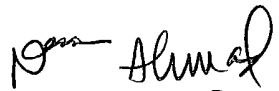
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fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jane Rhee  
July 28, 2004

  
8/2/04  
NASSER AHMAD  
PRIMARY EXAMINER